

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson**

Plaintiff,

v.

**Lark Avenue Car Wash**, a  
California Corporation

Defendant.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Lark Avenue Car Wash, a California Corporation; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Lark Avenue Car Wash, a California Corporation, owned the real property located at or about 5005 Almaden Expy, San Jose, California, between July 2019 and July 2020.

1       3. Defendant Lark Avenue Car Wash, a California Corporation, owns the  
2 real property located at or about 5005 Almaden Expy, San Jose, California,  
3 currently.

4       4. Defendant Lark Avenue Car Wash, a California Corporation, owned  
5 Classic Car Wash located at or about 5005 Almaden Expy, San Jose,  
6 California, between July 2019 and July 2020.

7       5. Defendant Lark Avenue Car Wash, a California Corporation, owns  
8 Classic Car Wash ("Car Wash") located at or about 5005 Almaden Expy, San  
9 Jose, California, currently.

10       6. Plaintiff does not know the true names of Defendants, their business  
11 capacities, their ownership connection to the property and business, or their  
12 relative responsibilities in causing the access violations herein complained of,  
13 and alleges a joint venture and common enterprise by all such Defendants.  
14 Plaintiff is informed and believes that each of the Defendants herein is  
15 responsible in some capacity for the events herein alleged, or is a necessary  
16 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
17 the true names, capacities, connections, and responsibilities of the Defendants  
18 are ascertained.

19  
20       **JURISDICTION & VENUE:**

21       7. The Court has subject matter jurisdiction over the action pursuant to 28  
22 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
23 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24       8. Pursuant to supplemental jurisdiction, an attendant and related cause  
25 of action, arising from the same nucleus of operative facts and arising out of  
26 the same transactions, is also brought under California's Unruh Civil Rights  
27 Act, which act expressly incorporates the Americans with Disabilities Act.

28       9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action is  
2 located in this district and that Plaintiff's cause of action arose in this district.

3  
4  
5 **FACTUAL ALLEGATIONS:**

6 10. Plaintiff went to the Car Wash in July 2019, August 2019 and July 2020  
7 with the intention to avail himself of its goods or services motivated in part to  
8 determine if the defendants comply with the disability access laws.

9 11. The Car Wash is a facility open to the public, a place of public  
10 accommodation, and a business establishment.

11 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed  
12 to provide wheelchair accessible sales counters in conformance with the ADA  
13 Standards as it relates to wheelchair users like the plaintiff.

14 13. The Car Wash provides sales counters to its customers but fails to  
15 provide wheelchair accessible sales counters.

16 14. A problem that plaintiff encountered was that the sales counters in the  
17 gift and coffee shop of the Car Wash were too high and there was no lowered  
18 portion of the sales counters suitable for wheelchair users.

19 15. Plaintiff believes that there are other features of the sales counters that  
20 likely fail to comply with the ADA Standards and seeks to have fully compliant  
21 sales counters available for wheelchair users.

22 16. On information and belief the defendants currently fail to provide  
23 wheelchair accessible sales counters.

24 17. Additionally, on the dates of the plaintiff's visits, the defendants failed  
25 to provide wheelchair accessible restrooms in conformance with the ADA  
26 Standards as it relates to wheelchair users like the plaintiff.

27 18. The Car Wash provides restrooms to its customers but fails to provide  
28 wheelchair accessible restrooms.

1 19. A few problems that plaintiff encountered is that there were no grab  
2 bars. Additionally, the restroom mirror and disposable paper towel dispenser  
3 were too high. The restroom sink had a cabinet style sink that did not provide  
4 any knee clearance for wheelchair users.

5 20. Plaintiff believes that there are other features of the restrooms that  
6 likely fail to comply with the ADA Standards and seeks to have fully compliant  
7 restrooms available for wheelchair users.

8 21. On information and belief the defendants currently fail to provide  
9 wheelchair accessible restrooms.

10 22. Moreover, on the dates of the plaintiff's visits, the defendants failed to  
11 provide wheelchair accessible paths of travel in conformance with the ADA  
12 Standards as it relates to wheelchair users like the plaintiff.

13 23. The Car Wash provides paths of travel to its customers but fails to  
14 provide wheelchair accessible paths of travel.

15 24. The problem that plaintiff encountered is that the paths of travel inside  
16 the Car Wash store were too narrow.

17 25. Plaintiff believes that there are other features of the paths of travel that  
18 likely fail to comply with the ADA Standards and seeks to have fully compliant  
19 paths of travel available for wheelchair users.

20 26. On information and belief the defendants currently fail to provide  
21 wheelchair accessible paths of travel.

22 27. Finally, on the dates of the plaintiff's visits, the defendants failed to  
23 provide wheelchair accessible dining surfaces in conformance with the ADA  
24 Standards as it relates to wheelchair users like the plaintiff.

25 28. The Car Wash provides dining surfaces to its customers but fails to  
26 provide wheelchair accessible dining surfaces.

27 29. One problem that plaintiff encountered is the lack of sufficient knee or  
28 toe clearance under the dining surfaces for wheelchair users.

1       30. Plaintiff believes that there are other features of the dining surfaces that  
2 likely fail to comply with the ADA Standards and seeks to have fully compliant  
3 dining surfaces available for wheelchair users.

4       31. On information and belief the defendants currently fail to provide  
5 wheelchair accessible dining surfaces.

6       32. These barriers relate to and impact the plaintiff's disability. Plaintiff  
7 personally encountered these barriers.

8       33. As a wheelchair user, the plaintiff benefits from and is entitled to use  
9 wheelchair accessible facilities. By failing to provide accessible facilities, the  
10 defendants denied the plaintiff full and equal access.

11       34. The failure to provide accessible facilities created difficulty and  
12 discomfort for the Plaintiff.

13       35. The defendants have failed to maintain in working and useable  
14 conditions those features required to provide ready access to persons with  
15 disabilities.

16       36. The barriers identified above are easily removed without much  
17 difficulty or expense. They are the types of barriers identified by the  
18 Department of Justice as presumably readily achievable to remove and, in fact,  
19 these barriers are readily achievable to remove. Moreover, there are numerous  
20 alternative accommodations that could be made to provide a greater level of  
21 access if complete removal were not achievable.

22       37. Plaintiff will return to the Car Wash to avail himself of its goods or  
23 services and to determine compliance with the disability access laws once it is  
24 represented to him that the Car Wash and its facilities are accessible. Plaintiff  
25 is currently deterred from doing so because of his knowledge of the existing  
26 barriers and his uncertainty about the existence of yet other barriers on the  
27 site. If the barriers are not removed, the plaintiff will face unlawful and  
28 discriminatory barriers again.

38. Given the obvious and blatant nature of the barriers and violations alleged herein, the plaintiff alleges, on information and belief, that there are other violations and barriers on the site that relate to his disability. Plaintiff will amend the complaint, to provide proper notice regarding the scope of this lawsuit, once he conducts a site inspection. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

**I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

39. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

40. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is

1 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
2 defined by reference to the ADA Standards.

3 c. A failure to make alterations in such a manner that, to the  
4 maximum extent feasible, the altered portions of the facility are  
5 readily accessible to and usable by individuals with disabilities,  
6 including individuals who use wheelchairs or to ensure that, to the  
7 maximum extent feasible, the path of travel to the altered area and  
8 the bathrooms, telephones, and drinking fountains serving the  
9 altered area, are readily accessible to and usable by individuals  
10 with disabilities. 42 U.S.C. § 12183(a)(2).

11 41. When a business provides facilities such as sales or transaction counters,  
12 it must provide accessible sales or transaction counters.

13 42. Here, accessible sales or transaction counters have not been provided in  
14 conformance with the ADA Standards.

15 43. When a business provides facilities such as restrooms, it must provide  
16 accessible restrooms.

17 44. Here, accessible restrooms have not been provided in conformance with  
18 the ADA Standards.

19 45. When a business provides paths of travel, it must provide accessible  
20 paths of travel.

21 46. Here, accessible paths of travel have not been provided in conformance  
22 with the ADA Standards.

23 47. When a business provides facilities such as dining surfaces, it must  
24 provide accessible dining surfaces.

25 48. Here, accessible dining surfaces have not been provided in  
26 conformance with the ADA Standards.

27 49. The Safe Harbor provisions of the 2010 Standards are not applicable  
28 here because the conditions challenged in this lawsuit do not comply with the

1 1991 Standards.

2 50. A public accommodation must maintain in operable working condition  
3 those features of its facilities and equipment that are required to be readily  
4 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

5 51. Here, the failure to ensure that the accessible facilities were available  
6 and ready to be used by the plaintiff is a violation of the law.

7  
8 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
9 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
10 Code § 51-53.)

11 52. Plaintiff repleads and incorporates by reference, as if fully set forth  
12 again herein, the allegations contained in all prior paragraphs of this  
13 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
14 that persons with disabilities are entitled to full and equal accommodations,  
15 advantages, facilities, privileges, or services in all business establishment of  
16 every kind whatsoever within the jurisdiction of the State of California. Cal.  
17 Civ. Code § 51(b).

18 53. The Unruh Act provides that a violation of the ADA is a violation of the  
19 Unruh Act. Cal. Civ. Code, § 51(f).

20 54. Defendants’ acts and omissions, as herein alleged, have violated the  
21 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
22 rights to full and equal use of the accommodations, advantages, facilities,  
23 privileges, or services offered.

24 55. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
25 discomfort or embarrassment for the plaintiff, the defendants are also each  
26 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
27 (c).)

28 56. Although the plaintiff encountered frustration and difficulty by facing



1 discriminatory barriers, even manifesting itself with minor and fleeting  
2 physical symptoms, the plaintiff does not value this very modest physical  
3 personal injury greater than the amount of the statutory damages.

4  
5 **PRAYER:**

6 Wherefore, Plaintiff prays that this Court award damages and provide  
7 relief as follows:

8 1. For injunctive relief, compelling Defendants to comply with the  
9 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
10 plaintiff is not invoking section 55 of the California Civil Code and is not  
11 seeking injunctive relief under the Disabled Persons Act at all.

12 2. Damages under the Unruh Civil Rights Act, which provides for actual  
13 damages and a statutory minimum of \$4,000 for each offense.

14 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
15 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

16 Dated: November 9, 2020

CENTER FOR DISABILITY ACCESS

17  
18 By:   
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21 Amanda Seabock, Esq.  
22 Attorney for plaintiff  
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